



LAPORTE COUNTY PLAN COMMISSION

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ANNEMARIE POLAN
Building Commissioner

LA PORTE COUNTY PLAN COMMISSION MINUTES November 24, 2015

MEMBERS PRESENT: MATTHEW BERNACCHI RITA BEATY KELLY
GLEN MINICH MIKE BOHACEK
GENE MATZAT

OTHERS PRESENT: Douglas Biege, Attorney, Dar Pavey, Secretary.

PLEDGE OF ALLEGIANCE

Matthew Bernacchi called the meeting to order.

ROLL CALL

Matthew Bernacchi asked Dar Pavey for roll call.

APPROVAL OF AGENDA

Matthew Bernacchi asked for a motion to approve the agenda. Mike Bohacek made a motion to approve the agenda. Rita Beaty Kelly seconded. Motion carried 5-0.

APPROVAL OF MINUTES

Matthew Bernacchi asked for a motion to approve the meeting minutes of October 27th, 2015. Mike Bohacek made a motion to approve the minutes. Gene Matzat seconded.

Matthew Bernacchi asked if there are any additions, provisions, deletions, or corrections.

All approved. Motion carried 5-0.

1. Petitioners, Daniel and Victoria Sanchez, by counsel, request that an unimproved roadway originally platted in Orchard Addition in Southtown Beach Subdivision near Fish Lake be vacated. The petitioners seek to have a portion on an unimproved roadway identified as "Shore Drive" vacated, with said portion sought to be vacated more particularly described as: A portion of platted Shore Drive being part of Orchard Addition in Southtown Beach Subdivision located in the Northeast Quarter of Section 17, Township 36 North Range 1 West, Lincoln Township. This property is located at 109 Helen Drive, Walkerton, IN, Lincoln Twp., zoned R1B.

Attorney Biege said that legal is adequate.

Anthony Novak said that he's an attorney at Newby, Lewis, Kaminski and Jones and he's here on behalf of Daniel and Victoria Sanchez. Attorney Novak said that the petitioners are here tonight, whose address is 109 Helen Drive in Walkerton, Indiana.

Attorney Novak said that the petitioners are here seeking to have a portion vacated an unimproved roadway platted in La Porte County, specifically near Fish Lake in the Orchard Addition of Southtown Beach Subdivision. Attorney Novak said that the portion at issue is highlighted on Exhibit A, which is attached to the petition. Attorney Novak said as to the platted self, the Southtown Beach Subdivision Plat was recorded in 1939 and he has a copy for your reference.

Attorney Novak said that if you look on the second page of that Plat, it was recorded in 1939 and the petitioners here are the owners of the southwest lots, specifically lots 11, 12, 13 and 14 and the specific portion that they're asking to be vacated is that portion of land of Shore Drive and it kind of veers up to the northwest and it kind of curves and is connected to Helen Drive.

Attorney Novak said that the petitioner's desire to have this portion of Shore Drive vacated for three reasons:

1. The portion has never been in use or never been approved.
2. The portion is neither feasible nor desirable to open for public use.
3. There is a well on the unimproved portion sought to be vacated that is owned by the petitioners that the petitioners wish to protect by the way of fence.

Attorney Novak said that this portion has never been in use or improved. Attorney Novak said as stated, this Plat was recorded in 1939 and the conditions of the Plat have changed as to defeat its original purposes. Attorney Novak said that he would like to compare two things. If you can look at the Plat that he just handed to you and also Exhibit A, which shows the highlighted portion of Shore Drive, you can see that the original intent of the Plat was to have Shore Drive improved and to run up and connect to Helen Drive. Attorney Novak said that if you look at Exhibit A, you will see that instead of going up into the highlighted portion, Shore Drive was improved to the southwest and there is actually asphalt laid there. Attorney Novak said that is actually the improved portion. Attorney Novak said that it has been seventy-five (75) years and that portion of Shore Drive has never been improved.

Attorney Novak said his second point is the portion is neither feasible nor desirable to open for public use. Attorney Novak said that they have spoken with Mike Yacullo, who is the County Engineer and asked if the county has intentions of developing this land. Attorney Novak said that Mr. Yacullo stated at this time the county has absolutely no intentions to develop that portion of Shore Drive. Further, the neighbors do not need to use this portion of Shore Drive. They're not denied access if this was vacated to their lands; they would not be denied access to Fish Lake.

Attorney Novak said his third point is that they still have access by way of the unimproved portion of Helen Drive, Ida Drive, Longshore Drive, or the improved portion of Shore Drive.

Attorney Novak said that there is a well on this unimproved portion sought to be vacated that petitioners would like to protect by way of fence. Attorney Novak said that this well was installed by Bill Oliver and if you can see Exhibit D attached to the petition, he has an affidavit of Mr. Oliver attached. Attorney Novak said that Mr. Oliver states that he placed that well there for three specific reasons.

A) It was at least fifty feet away from the nearby septic. There are two septic tanks that are about within fifty feet, one is owned by the petitioners and one is owned by a neighbor that he believes is to the southwest of their property. Attorney Novak said that the way Mr. Oliver does his wells is to place them at least fifty feet away from a nearby septic. Attorney Novak said that he said currently it's not a county requirement; he talked to him and he said that it might be a requirement to place it fifty feet away at some point, but at any event that's why he has it there.

B) He choose that location of that well because of the volume of water that it can create. Where the location of the well is it can produce about thirty gallons of water per minute. Attorney Novak said that if it was a little closer to the house, it would produce only about ten to twenty per minute.

C) The final reason he choose that location for the well is he reasonably thought that was the location on land that the Sanchez's owned and he believes that intention was directed by the Sanchezs' as they thought they had a reasonable belief that is land that they owned. Attorney Novak said what they thought was their yard ran all the way to that improved portion of Shore Drive. Attorney Novak said that they certainly had a good reasonable belief that they owned that portion of land.

Attorney Novak said that in Mr. Oliver's affidavit he said that while it could be moved – he did go out to this property in the fall, but he said that well could possibly be moved a little bit to the northeast about forty five degrees, but he doesn't know if it could be moved off the unimproved portion of Shore Drive. He did state that he was reasonably certain that if it was moved, two things would happen. It would produce a lot less water and closer to the ten to twelve gallons of water per minute and further, it would cost about three-thousand dollars for the Sanchez's to have that moved.

Attorney Novak said that he thinks that is what is most important about Mr. Oliver's affidavit is that the final statement that he says. The well might be relocated, but he believes that its current location is the most practical, and the burden of moving it out, weights the benefits of its relocation.

Attorney Novak said that beyond protecting this well, we believe that vacating this portion of Shore Drive and installing a fence would actually be in the publics interest for two reasons. First and foremost, he thinks that it's widely known that there is a bit of hostility between the

neighbors out there. Attorney Novak said that it is their hope that if they were able to erect a fence that it would maybe not promote harmony, but maybe ease the tensions out there. Attorney Novak said that secondly they believe that it is in the public interest to vacate this portion of Shore Drive as they don't believe that it's going to diminish the lands value, but instead, they believe that it's going to add value to the county by way of additional property taxes.

Attorney Novak said that what he would like to point your attention to is what is not at issue here. Attorney Novak said that he thinks what's not at issue is whether or not the well should be moved. Attorney Novak said that they were made aware that a petition was filed by the neighbors to vacate this well and to have it moved as it's in the public way and that it gets in the way of personal and emergency vehicles. Attorney Novak said that as he stated earlier, this portion that is platted has changed since its original purpose. Attorney Novak said that there is no longer a purpose and an intent to have personal cars there, let alone emergency vehicles. Attorney Novak said that with speaking with the Building Commissioner in regards to who would have the authority to have them move the well, she thought that maybe the Health Department could do that and as of right now, they haven't been contacted by any entity asking for them to move the well.

Attorney Novak said that in conclusion, we believe that if you look at just the facts of this case, that this situation is a prime example of what the drafters of the Indiana Code and the Joint Zoning Ordinance of La Porte County, specifically Article 9 intended in allowing a petitioner to vacate a portion of a Plat pertaining to their land.

Attorney Novak said that this road was platted in 1939 and it has been almost seventy-five years and it has not yet been improved. Furthermore, the county has said that they have no intentions to improve it. Attorney Novak said that the petitioners have spent money improving this portion of Shore Drive and it would be a great economic burden to require them to have the well moved.

Attorney Novak said that by allowing this portion to be vacated and a fence to be erected, they believe that it would promote harmony, or at least ease the tensions in the neighborhood.

Attorney Novak said that no neighbors would be denied access to either their lands, or Fish Lake by vacating this portion of Shore Drive. Finally, vacating this land would add value to the county by way of an additional property taxes. Attorney Novak said that at this time he has nothing further, but he is certainly available for questions.

Mike Bohaeck said that in reference to your well in your petition, he has a couple of concerns unlike other properties near with the waterways. Mr. Bohacek asked attorney Novak to explain to him how somebody punches a well and doesn't get a survey, and doesn't know what property is theirs, or not theirs.

Attorney Novak said that the actual placing of the well was there before they were representing. Attorney Novak said that he only knows where the well is currently and they understand that is on a portion of land that is not there. Attorney Novak said that is undisputed. Attorney Novak

said that what they're hoping is that by using this procedural mechanism that they can have it on a portion of land that is theirs and they will certainly pay taxes on it in the future.

Mike Bohacek said that creating your own hardship is not the basis of a reason to provide a land ---

Attorney Novak said that they aren't saying that the well itself is the one reason why they want it to be vacated; that's just one of many reasons why they are asking for it to be vacated.

Mike Bohacek said that he heard three. Mr. Bohacek said that it was making the neighbors more harmonious by being able to construct a fence and adding this little sliver of land to improve the tax value of the area. Mr. Bohacek said that the county owns many public right-a-ways and many part of lands and property that have less parcel all over the place.

Mr. Bohacek said as a Commissioner they're going to have another question for you as well. Mr. Bohacek told attorney Novak that they have a well on public property, you're their lawyer, Mr. Bohacek asked attorney Novak what he's going to provide the county. Mr. Bohacek said if the county runs over the well head, clearly it's in a public right-a-way. Mr. Bohacek asked attorney Novak how he's going to remedy that situation.

Attorney Novak said that if there is some sort of contingencies that you would want to place whether or not that there is some sort of easement we have to do, or whether or not there some sort of indemnification they would have to do ---

Mr. Bohacek said that we just can't have people plunging wells. Mr. Bohacek asked what if it was a septic system, what if was a septic line, or tank, and now all of a sudden this is an issue when they encroach on public lands once again.

Attorney Novak told Mr. Bohacek that he certainly understands his concerns, and he certainly would not encourage clients in the future to simply put a well where ever they are, but the facts as presented is this is where the well is and this is a portion of a Plat that code allows us to ask to be vacated and they're certainly using procedurally a mechanism to do so.

Glen Minich told attorney Novak that he said that the easement that they are looking to vacate was replaced with an extension which runs to --- it isn't even shown here as the next lot, but he's guessing that is the lot that you're talking about that is southwest of their property where there is a septic field in close proximity, or would be a closer proximity to their well. Mr. Minich asked if that extension is a legal road, or right-a-way. Mr. Minich said that all they see is a picture of asphalt, and he doesn't see where you have given us that legal entrance, or the next property line.

Attorney Biege said that this was originally platted as a road, or as a street, they just never built it. Attorney Biege said that we're looking at the original plat as it was drawn.

Glen Minich said that they changed the route of the road, but he doesn't see where he has been given any evidence that it was legally plotted. Glen asked that the road that exist now is on whose property.

Attorney Biege asked Glen if he was seeing the original plat.

Glen said that he sees the original plat, because the original plat is showing the subdivision that they call Southtown Beach, but there is a house that exist outside of the picture that is using a roadway, which he hasn't seen that they have had any legal runway to it. Glen said that although they vacated one piece, it doesn't actually show that we created a legal plot for the extension that was put in.

Attorney Biege told Glen that he would almost have to line Beacon with the plat and the roadways to see how it came about.

Glen Minich said that it is pretty apparent that they extended Shore Drive, but he doesn't know where they actually put the legal extension.

Rita Beaty Kelly asked if Sanchez's access their property from Shore Drive.

Attorney Novak said that they access the property in two ways. Attorney Novak said that on Exhibit A you can see to the right of the page, Ida Drive, and Ida Drive is improved and then you can see Shore Drive on the bottom and Shore Drive is also improved. They can access it by that way, however their cars can't technically come up because that is unimproved at that portion. Attorney Novak said that if you see to the left of the Exhibit A, you can see Helen Drive, and Helen Drive is actually unimproved, but it is more like a dirt road that has been driven on at least at the top and they also access it through there.

Rita Beaty Kelly asked if they're driving all the way down Helen to lot 11.

Attorney Novak said that he wouldn't say all the way down, he would say about to where lot 11 is, but not all the way down to Shore Drive. Attorney Novak said that there is actually a pretty steep drop off to where vehicles can't get through at that point.

Glen Minich asked Mitch Bishop, County Planner, in the future there is always a chance that additional services may be necessary to these residences out there -- sewer, water, and all kinds of the things. Glen asked Mitch how much of an impact in removing this easement right-a-way going to make. Glen said that if you do a water line you have to have continuous loops, otherwise there are a lot of problems with the water lines. Glen said that any water extension out there would have to be continuous.

Mitch Bishop, County Planner said that there has been a lot of talk in that area regarding that conservation conservancy district about sewer and none of that has taken. Mitch said that there has been speculation of sewer and water and to his knowledge it was always on the east portion of upper Fish Lake and not this portion, this being more the wet side.

Glen Minich said that he's sure that if we bring services out in that area, you're going to try to connect everybody out there.

Mitch Bishop said that is all he's heard.

Glen Minich asked if it would make any impact.

Mitch Bishop said that this is a common problem in all the lakes and the communities. Mitch said that if you look at Beacon there is a tremendous amount of unimproved right-a-ways on approved roads.

Glen Minich said that those could all be used.

Mitch Bishop said that we could improve them.

Glen Minich said that he's not necessarily saying approve them, but they could be used for buried sewage lines, water lines ---

Mitch Bishop said that is what they're there for and that would be improvements. Mitch Bishop said that as of right now there is nothing in the forecast.

Board members speaking amongst themselves.

Mike Bohacek said that he has punched a lot of wells and has done a lot of septic. Mr. Bohacek said that he knows where his property is and where his property isn't, and most people before you drop a well get a platted survey and you make sure you're within your property lines. Mr. Bohacek asked why?

Attorney Novak said that he understands what happened, and he's not saying that this is obviously if you have a legal description and survey, this would be correct, but in a situation like this where there are these lots that are close together and there is this unique situation where the platted Shore Drive shows that it runs up, but for however long asphalt has been down there, people use that as their own official edge of their property.

Mike Bohacek said that he thinks that this was platted in 1949 and he doesn't think that with asphalt --

Attorney Novak said that he's unsure, but as he's stated, he's not saying that's correct, or not, but he even knows that in certain areas where he has lived before, when you see something like that, it's not official, but you've always used that as the edge of your boundary. Attorney Novak said that he's not saying that it is, but he can see how they have a good faith belief that was theirs. Attorney Novak said that they should have got a survey and they should have saw it, but they didn't.

Board members speaking amongst themselves.

Mitch Bishop said that in the well ordinance, there is actually dimensional setbacks where it's fifteen foot from the side or rear.

Glen Minich said that he doesn't think that we actually have that in our ordinance, we always refer to the Health Department for setbacks and things like that.

Mike Bohacek said that he doesn't think just because you can't make a setback, doesn't mean you can encroach on the property that is not yours.

Glen Minich asked that if we don't vacate the property and the well just stays, is that really a problem, we wouldn't take any liability from it.

Attorney Biege said that if the Plan Commission chooses to leave it as is, it would be up to the County Commissioners to decide whether or not they will take action.

Mike Bohacek said that there could be forcing of vacation of the well, or some type of document that holds the county harmless from any damage to the well, or any water coming out of the well.

Attorney Biege said that there would be a combination there. Attorney Biege said that there would have to be some type of indemnification to the county in case there is any damage, or harm as a result.

Matthew Bernacchi asked for Remonstrators:

Matthew Bernacchi asked if there are any remonstrators that would like to speak.

Remonstrators:

Matthew Bernacchi asked for name and address for the record.

Lee Payne said that for whatever reason he has been chosen to speak for the community.

Mr. Payne said that he lives at 1406 N. Longshore Drive.

Mr. Payne said that some of the points that were brought up he and the community have talked about. Mr. Payne said that back in August they put up a petition to have that well vacated and the Commissioners have a copy of this. Mr. Payne said that he thinks that it was also given to the Building Commissioner. Mr. Payne said that the whole community is pretty much against this.

Mr. Payne said that in some point and time they would like to have this road actually put in for emergency services. Mr. Payne said that if you were to take and call up 110 "help" on your GPS phone, or computer it would send you down Helen Drive to this home that is sitting at 110. Mr. Payne said that this hill that has been put in there was put in probably by the previous owners, the Osborn's when they had a septic put in. Mr. Payne said that he doesn't know if the septic

was put in legally or not, but their well was put in this year – early January. Mr. Payne said that it hasn't been there for years.

Mike Bohacek asked whose well that is.

Mr. Payne said Sanchez's well. It was put in recently

Mr. Payne said that if you go back to the Plat Book #7, page 132 and 133, if you go down to witness thereof, it says the street, corners, park, bench and walks are hereby dedicated to the public for the use of public use. Mr. Payne said that those streets were given to them in 1939 and they want to keep them.

Board members speaking amongst themselves.

Matthew Bernacchi asked if there are any other remonstrators here this evening.

Matthew Bernacchi asked for name and address for the record.

Ed Kogut, 123 Shore Drive, Walkerton, Indiana. Mr. Kogut asked if somebody put a well in your yard – your neighbor, would you give them a piece of land because they made a mistake.

Mike Bohacek told attorney Novak that one of the remonstrators said that the well was done very recently. Mr. Bohacek asked the date of the well. Mr. Bohacek said that he would be careful because this is on the record and make sure that your client is specific, clear, and accurate on the date.

Mrs. Sanchez said that it wasn't just recently. Ms. Sanchez said that it has been a couple of years at least.

Attorney Novak said that when he did speak with Mr. Oliver he did ask him for the specific date and he said that he didn't know. Attorney Novak asked Mr. Oliver if he thought it was maybe two, three, or four years ago, and Mr. Oliver stated yes.

Mike Bohacek asked when the well was pumped.

Mitch Bishop, County Planner, said that there was a Health Department documentation that said it was November of 2014.

Mike Bohacek said that was last year. Mr. Bohacek asked Ms. Sanchez if she remembers punching a well last year.

Matthew Bernacchi asked if there are any other remonstrators this evening.

Frank Lazzaro, 1506 Shore Drive, Walkerton, Indiana. Mr. Lazzaro said that he was there when they put the well in and it was in the spring. Mr. Lazzaro said that last year it was a shallow well and Annmarie knows about that. Mr. Lazzaro said that the well was punched this spring.

Attorney Biege said that he does have a letter that was submitted to the Building Commissioner Phillip Casto, 110 Helen Drive remonstrating against this vacation and he cites essentially snow removal, garbage removal, used as a turn-a-around; emergency services issues and the use access point on a regular basis. Attorney Biege said that is part of the record.

Matthew Bernacchi asked if there are any other remonstrators.

Matthew Bernacchi asked if there is a motion.

Laura (inaudible) 1601 Washington Street, Michigan City, Indiana said that Frank Lazzaro has his septic system on their land and did not get a survey without their permission.

Mike Bohacek said that is a civil matter.

Mike Bohacek made a motion to deny the petition and also refer the matter of the well back to the County Commissioners for final determination as to what documents would be required. Glen Minich seconded.

Matthew Bernacchi asked if there are any questions on the motion.

All approved. Motion carried 5-0.

Matthew Bernacchi asked if there are any other petitions.

Matthew Bernacchi asked if there is any old business.

Attorney Biege said that the committee met and discussed the issue on ponds and other future issues and he thinks that they have a resolution --- at least a recommendation on a couple changes in the code in that regard. Attorney Biege said with that they have the map changes that Mitch has done and over one-hundred and twenty code changes that they've accumulated. Attorney Biege said that we need to get that moving. However, Representative Dermody has been gracious enough to introduce the change in the current zoning law which alleviates us in the responsibility of notifying all the adjoining property owners around La Porte County. Attorney Biege said that he would suggest that even though the work is done, let's see if that gets us through Legislative session, and if it does, it will save the county thousands of dollars.

Attorney Biege said that we will need to have a public hearing and he would suggest that we wait to set that hearing date next month, or the month after to see if we got that change.

Matthew Bernacchi asked if there is any new business.

Matthew Bernacchi wished everyone a Happy Thanksgiving.

There being no further business before the Plan Commission this evening, meeting adjourned at 6:40 p.m.

MATTHEW BERNACCHI, Vice President



ANNEMARIE POLAN, Rec. Secretary